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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,881	07/29/2003	Toby Wexler	20030626	7935

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/630,881

Applicant(s)

WEXLER, TOBY

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6, 10, 11 and 13-17 is/are rejected.  
7) ☒ Claim(s) 7-9, 12, 18, 18 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,382,140 to Wexler.

Regarding Claims 1 and 13, Wexler teaches a protective animal collar assembly and method comprising: a) a hollow hemispherical member having equatorial and polar regions (#14), irregular opening (#26) therein extending from said polar region to near proximity with said equatorial region; b) a visor member (#18) having a parabolic notch along one edge corresponding at least in part to a portion of said irregular opening, pivotally attached to said hemispherical member; and c) a means for securing (#20) said visor in position relative to said hemispherical member.

Regarding Claim 2, Wexler teaches the visor member at least partially covers said irregular opening in said hemispherical member (#18 and 26).

Regarding Claim 3, Wexler teaches the parabolic notch is disposed adjacent said polar region defining a parabolic opening between said visor member and said hemispherical member (Fig. 3 and 4).

Regarding Claim 4, Wexler teaches the means for securing are hook and latch members strategically located adjacent said parabolic opening (#20 and 22).

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Regarding Claim 5, Wexler teaches it comprises protective edge moldings (Perimeter #26).

Regarding Claim 10, Wexler teaches a protective animal collar assembly comprising: A hollow hemispherical member having a polar region (#14) and equatorial region defined by the major diameter, and an irregular shaped aperture (#26), a portion of which is parabolic extending from said polar region to near proximity with said equatorial region, a visor (#18) having a parabolic notch centrally located along one edge pivotally attached to said hemispherical member at said major diameter said notch corresponding to the parabolic portion of said hemispherical member defining a parabolic opening there between, and a means (Fig. 5 #40) for variably fixing said visor relative to said hemispherical member, said hemispherical member having means for attaching cylindrical and conical extension members.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 1, 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,382,140 to Wexler in view of U.S. Patent No. 6,082,309 to Wexler.

Regarding Claims 6, 11, 14, 16, and 17, Wexler '140 is silent on a cylindrical ring member having a major diameter equivalent to that of said hemispherical member

removably attached to said hemispherical member at said equatorial region. However, Wexler '309 teaches a cylindrical member having a major diameter equivalent to that of the hemispherical member and removably attached to the equatorial region (Wexler '309 #54). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice involving the selection of an alternate equivalent means of securing the two hemispherical portions together for ease of assembly and manufacturing.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,382,140 to Wexler in view of U.S. Patent No. 4,200,057 to Agar.

Regarding Claim 15, Wexler is silent on the step of extending said shell by attaching a conical ring member. However, Agar teaches that it is old and notoriously well-known to place a conical member extension around an animal's head (Agar Fig. 5). It would have been obvious to one of ordinary skill in the art to modify the teachings of Wexler with the teachings of Agar to control movement of the head but allowing the animal the ability to access food readily.

### ***Response to Arguments***

Applicant's arguments filed 1-6, 10, 11, and 13-17 have been fully considered but they are not persuasive.

Examiner maintains that Wexler '140 teaches at least one hemispherical member element #14. Applicant has merely claimed "a hollow, hemispherical member". There is no negative limitation within the claim limiting it to a single hemispherical member as

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argued by applicant. Moreover, Wexler '140 teaches only on hemispherical member that has an irregular opening.

In response to applicant's argument that globular enclosure taught by Wexler '140 is for an entirely different use than the claimed protective collar, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The current claim language does not patentably distinguish the structural differences over the cited prior art. Examiner maintains that Wexler '140 teaches each an every element claimed.

Regarding claim 10 and claims 6, 11, 14, 1, and 17, examiner maintains that Wexler '140 teaches a "a hemispherical member (Wexler '140 #14) having **means for** attaching cylindrical and conical extensions. At present in claim 10, applicant has claimed the means for attaching but has not actually claimed the cylindrical or conical extension. None the less, Wexler '140 Fig. 5 teaches a means for attaching #40 and the modified teachings of Wexler '309 teach a means for attaching #54. Wexler '140 element #12 can be viewed as the extension or even element #24.

***Allowable Subject Matter***

Claims 7-9, 12, and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

07 December 2004



Peter M. Poon  
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